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REPORT
102-86

TITLE X PREGNANCY COUNSELING ACT OF 1991

JUNE 20 (legislative day, JUNE 11), 1991.—Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 323]

The Committee on Labor and Human Resources, to which was referred the bill (S. 323) to ensure that pregnant women receiving assistance under title X of the Public Health Service Act are provided with information, counseling, and referrals regarding their pregnancies and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. SUMMARY OF THE BILL

As reported by the Committee, S. 323 amends current law regarding family planning services. The bill expresses the intent of Congress in enacting Title X of the Public Health Service Act and,

specifically, a prohibition on using federal funds for programs where abortion is a method of family planning. S. 323 clarifies that this prohibition should not be interpreted to suppress information, counseling and referral upon request regarding pregnancy termination to pregnant women who are provided assistance under Title X.

The bill requires that pregnant women who request information must receive nondirective counseling and referrals concerning all legal and medical options including prenatal care and delivery, infant care, foster care or adoption services, and pregnancy termination.

II. HISTORY OF THE LEGISLATION

S. 323, a bill to ensure that pregnant women receiving assistance under Title X of the Public Health Service Act are provided with information and counseling regarding their pregnancies, was introduced by Senator Chafee and others on January 31, 1991, and was referred to the Senate Committee on Labor and Human Resources. The Committee held hearings on S. 323 on May 16, 1991. On June 6, 1991, the Chairman of the Committee, Senator Kennedy, convened an executive session to consider S. 323. On that day the bill was reported favorably, on a vote of 12-5, by the Committee on Labor and Human Resources.

III. SECTION-BY-SECTION ANALYSIS

Section 1 of the bill provides that this Act may be cited as the Title X Pregnancy Counseling Act of 1991.

Section 2 amends existing laws regarding family planning services to ensure that projects receiving assistance under Title X provide pregnant women that they serve, nondirective information and counseling, and referrals upon request, concerning all legal and medical options regarding their pregnancies. Such nondirective information and counseling and referrals shall include prenatal care and delivery, infant care, foster care or adoption services, and pregnancy termination.

IV. BACKGROUND AND NEED FOR THE LEGISLATION

Title X of the Public Health Service Act provides federal funds for project grants to public and private nonprofit organizations for the provision of family planning services. Title X was originally established by the Family Planning Services and Population Research Act of 1970, Public Law 91-572. It is the only federal program targeted specifically to family planning. Other federal programs which provide related services include Medicaid, the Maternal and Child Health Block Grant, and the Social Services block grant. Core services which may be supported by Title X funded projects include contraceptive information and the provision of contraceptive services, gynecological examinations that include basic lab tests and other screening services for high blood pressure and breast and cervical cancer (Pap smears), sexually transmitted disease detection and pregnancy testing, "natural" family planning, and infertility services. Clinics may also provide outpatient sterilization and prenatal care services.

In 1990, an estimated \$136 million was spent for family planning and related activities. Most Title X dollars support project grants for services in family planning clinics. The 1990 appropriation funded some 88 "services grantees", which included State health departments, other governmental entities, and nonprofit health agencies and community groups. Each year approximately 4.5 million women, including 1.5 million teenagers, will receive family planning and infertility services at some 4,000 clinic sites operated by health departments, hospitals, universities, and other public and nonprofit agencies who subcontract with the primary grantees to provide these services.

Title X requires that priority for the provision of clinic services be given to low-income patients. The typical client is young and is below or near the federal poverty level. About seven in ten patients are white and eight in ten patients have incomes below 150 percent of the poverty level. Clinics must provide services free of charge (except to the extent that Medicaid or other health insurance covers these services) to clients whose incomes do not exceed 100 percent of the poverty level. A sliding payment scale must be offered for those whose incomes are between 100 and 250 percent of the poverty level. For many of these patients, Title X funded clinics provide the only entry point into the general health care system. As a result, Title X funded clinics provide critical screening procedures for AIDS and other sexually transmitted diseases.

In 1987, eight percent of women were at risk of unintended pregnancy due to the fact that they used no form of contraception. These women were responsible for fifty seven percent of all unintended pregnancies. Effective use of contraception prevents such unintended pregnancies. More than 31.8 million women remain at risk for unintended pregnancies. More than half of the six million pregnancies in the United States every year are unintended. The government's investment in family planning plays a critical role in reducing the numbers of unintended pregnancies and in reducing low birthweight and infant mortality.

Since its inception, Title X has proscribed the use of funds to pay for abortion services. According to a 1982 General Accounting Office report, and 32 subsequent HHS Inspector General Audits, Title X funded clinics are adhering to this prohibition and are not using these funds to pay for abortion services. In a hearing before the House Energy and Commerce Committee on April 3, 1984, then Secretary of Health and Human Services Margaret Heckler stated as follows:

I would like to say that as a result of the GAO report, and the questions raised therein, there have been 32 Inspector General audits, to either confirm or deny the basic premise of the GAO. In the Inspector General audits we have learned that in general the prohibition against abortion was well known at the level of the family planning clinics, and it was being honored * * * and as well, the Inspector General's findings clearly show that the family planning clinics have been very aware and have honored the law in terms of the abortion prohibition, which was the main subject of the GAO inquiry. (Committee on

Energy and Commerce Hearing Record, 98-121, April 3, 1984, P. 472)

S. 323 does not alter this prohibition in any way. Section 1008 of Title X states as follows:

None of the funds appropriated under this Title shall be used in programs where abortion is a method of family planning.

Since the beginning of the Title X program, Section 1008 has been interpreted to mean that funding of abortion services is proscribed, but including abortion as an option in pregnancy counseling is not. In 1981, HHS issued guidelines for the Title X program to provide direction on the issue of pregnancy counseling. These guidelines read as follows:

Grantees must provide pregnancy diagnosis and counseling to all clients in need of this service. Pregnancy testing is one of the most frequent reasons for an initial visit to the family planning facility, particularly by adolescents. It is therefore important to use this occasion as an entry point for providing education and counseling about family planning.

Pregnant women should be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an unintended pregnancy are to be given non-directive counseling on the following alternative courses of action, and referral upon request:

Prenatal care and delivery;
Infant care, foster care, or adoption; and
Pregnancy termination.

These guidelines made it clear that Title X funded family planning providers were to provide women who seek information about how to manage an unintended pregnancy with non-directive counseling regarding all legal and medical options, including abortion. These guidelines are consistent with the medical and professional ethics of the American Medical Association and the American College of Obstetricians and Gynecologists which insist on a patient's right to full medical information and self-determination.

In 1988, HHS reversed this policy and promulgated new regulations forbidding the provision of information on abortion to pregnant women, even if the woman requests such information. The new regulations require Title X projects to refer pregnant patients for appropriate prenatal care and/or social services by furnishing a list of providers that promote the welfare of the mother and the unborn child. If asked about abortion, a counselor in a Title X funded clinic is to inform the patient that they do not consider abortion to be a method of family planning and therefore does not counsel or refer on abortion.

When these regulations went into effect in March of 1988, lawsuits against the Department of Health and Human Services were filed in federal district courts in Colorado, Massachusetts and New York. Judges in the Colorado and Massachusetts cases found the rules to be unconstitutional and issued injunctions protecting plain-

tiffs across the country. However, the regulations were upheld in New York's Second Circuit Court of Appeals. As a result of this 2-1 split, the Supreme Court agreed to hear arguments in *Rust v. Sullivan*, which represents a consolidated appeal of the 1988 regulations. On May 23rd, the Supreme Court, by a 5-4 decision, upheld the regulations.

S. 323 would overturn the Supreme Court's decision in *Rust v. Sullivan* by codifying the previous guidelines governing Title X. S. 323 would require Title X funded clinics to provide women who request information for the management of an unintended pregnancy with information on all legal and medical options, including abortion.

It should be noted that S. 323 would not compel any provider to counsel on abortion if a provider objects to such counseling. The Title X program has always funded providers who offer less than the full range of services. Such a provider is only required to refer a woman requesting information on all other options to another provider of broader services or to the grantee. This is the current policy and practice that S. 323 would not change.

An example of this policy is the case of Providence Hospital in Washington, D.C. which is operated in affiliation with the Catholic Church and receives Title X funds. Since Providence Hospital only offers "natural family planning" counseling and services, it refers women seeking information on other methods to its grantee, the Council of Government (COG). COG then refers the woman to another program which is willing to provide the information to the patient. Under S. 323, women seeking counseling and referrals for all legal and medical options would be referred to another provider or the grantee.

For 18 years, before the 1988 regulations were implemented, the Title X program was successfully operated in accordance with Congressional intent. S. 323 will return the Title X program to the way it was operated before these regulations were adopted—respecting the rights of patients and providers and providing quality care to low income women.

V. COMMITTEE VIEWS

The Committee objects to the 1988 regulations for several reasons. First, they would create a two-tiered health care system where low-income women receive more limited care and information from federally funded clinics than women who can afford private health care. This is contrary to the intent of the Title X program, whose goal is to provide quality health care to poor women.

Second, the Committee believes that each patient is entitled to full and fair disclosure of all relevant information and that such disclosure is essential for the patient to make an informed decision. In fact, the regulations conflict with the professional ethics of major medical organizations, including the American Medical Association and the American College of Obstetricians and Gynecologists, which insist on the patient's right to full information and self-determination. The AMA's policy states that a "physician should counsel his or her patient on the full range of medical treatment options appropriate for a given medical condition."

Third, these regulations would establish a dangerous precedent where the Government would direct the type of information that is provided between a doctor and patient.

Fourth, the Committee views these regulations as placing health care professionals at risk for medical malpractice. Physicians are routinely held liable for failing to provide complete medical information to a patient about his or her medical condition and medical options.

Fifth, the regulations would require family planning providers to choose between offering only government-approved information to poor pregnant women or foregoing their federal funds. Many clinics have already stated that they would relinquish the federal funds in order to avoid these restrictive regulations and the increased exposure to medical malpractice. The result will be that fewer low-income women will receive critical family planning services and more unintended pregnancies will occur.

The Department of Health and Human Services has notified grantees that it intends to require compliance with the regulations within 60 days from the Court order. The Committee believes that prompt enactment of S. 323 is essential in order to avoid major disruption of the Title X program across the country.

VI. VOTES IN COMMITTEE

S. 323 was brought for markup at the Committee on Labor and Human Resources executive session on June 6, 1991. The Committee voted to report S. 323 by a vote of 12-5.

VII. REGULATORY IMPACT STATEMENT

The Committee has determined that there will be no additional regulatory burden and in paperwork imposed by this bill.

VIII. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 11, 1991.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 323, the Title X Pregnancy Counseling Act of 1991, as ordered reported by the Senate Committee on Labor and Human Resources on June 6, 1991. The bill would require projects receiving funds under title X of the Public Health Service Act to offer pregnant women information and counseling on all of their legal and medical options regarding their pregnancies. Because the bill would not authorize additional funds or alter the spending pattern of the overall program, the bill would not affect federal spending. S. 323 would not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Karen Graham (226-2820).

Sincerely,

ROBERT D. REISCHAUER,
Director.

IX. MINORITY VIEWS OF MESSRS. HATCH, DURENBERGER, THURMOND, AND COATS

We support the fundamental principles of the Title X family planning program--to provide comprehensive, voluntary family planning, infertility services, and family planning information to low-income women. We oppose abortion as a method of family planning.

From its inception, the federal Title X program was designed to separate the issues of family planning and abortion. In creating Title X, Congress included a specific prohibition. Section 1008 states, "None of the funds appropriated under this Title shall be used in programs where abortion is a method of family planning."

When Congress established Title X, it was a program with a clear mission: to plan and prevent pregnancy. Once a pregnancy occurs, the patient requires services that are outside the scope of Title X. Under the enacting statute for Title X, pregnant women should be referred outside the Title X program to prenatal services and adoption services. As earlier stated, the enacting statute expressly prohibited the use of Title X funds in programs in which abortion is a method of family planning.

In February 1988, the Department of Health and Human Services issued regulations clarifying the statutory prohibition on the taxpayer funding of abortion as a method of family planning. Specifically, the regulation requires that a project receiving federal funds under Title X, (1) not counsel or refer for abortion; (2) be organized so that it is physically and financially separate from prohibited abortion activities such that Title X projects have an objective integrity and independence from abortion activities; and (3) not encourage, promote, or advocate abortion as a method of family planning.

The Supreme Court recently affirmed those regulations, clearing the way for a federal family planning program that is separate and distinct from abortion. We concur with the Court's decision and believe the regulations should be implemented.

We oppose S. 323 because it would overturn the regulations by requiring all Title X recipients to provide pregnant women with information about abortion, regardless of whether or not the abortion is medically necessary. Programs that wish to provide contraceptive services but not promote abortion would be required to provide abortion information or be ineligible for funds. In addition, this legislation would continue the polarizing difficulties the Title X family planning program has experienced by embroiling it in the difficult issues of abortion.

The regulation does not prevent women from seeking and obtaining an abortion outside the Title X program. It merely ensures that the projects receiving federal monies operate according to law and that projects do not perform, promote, encourage, or advocate abor-

tion. If an organization does not want to accept these guidelines, they may forgo the federal subsidies. It is not unreasonable for the government to ask that information on abortion be obtained outside of a taxpayer subsidized Title X program.

In addition, these regulations do not restrict the First Amendment right to freedom of speech. We concur with Secretary Sullivan who wrote the following in a letter to Senator Kennedy dated June 5, 1991:

I would also note that although pressed in the name of free speech, S. 323 would actually compel speech by requiring grantees to provide abortion counseling, regardless of their moral, religious, or political objections to abortion. A grantee who refused to provide this advice would be ineligible for funds. That approach is impossible to reconcile with the First Amendment concerns that supporters of this legislation invoke as requiring its passage.

In conclusion, we oppose S. 323. If enacted, Title X will continue to be entangled with unacceptable abortion activities and would further undermine the role of federal planning clinics.

ORRIN G. HATCH.
DAVE DURENBERGER.
STROM THURMOND.
DAN COATS.



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